IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

FAO.No. 179 of 2006()

AGAINST THE ORDER DATED 15/06/2006 IN IA.313/06 IN CMA.4/2004 OF SUB COURT, PALA

APPELLANTS: PLAINTIFFS:

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1. MARIYAKUTTY, W/O.THOMMAN, AGED 72 YEARS, KIZHAKKEKKARAMYALIL, POOVAKKULAM KARA, VELIYANNOOR VILLAGE, MEENACHIL TALUK, KOTTAYAM DISTRICT.

2. JOY, S/O.THOMMAN, AGED 48 YEARS, DO. DO.

3. CHINNAMMA, W/O.GEORGE JOHN, AGED 46 YEARS, VADAKKEKARA, PUTHINPURAYIL, MANNATHOOR KARA, THIRUMARADI VILLAGE MOOVATTUPUZHA TALUK.

4. SARAKUTTY, W/O.ELIAS, VETTIKATTIL, AGED 44 YEARS, MANNATHOOR KARA, RAMAMANGALAM VILLAGE, MOOVATTUPUZHA TALUK.

5. SUNNY, KIZHAKKEKARA, AGED 42 YEARS, MYALIL HOUSE, POOVAKKULAM KARA, VELIYANNOOR VILLAGE, MEENACHIL TALUK.

6. JAMES, AGED 38 YEARS, DO. DO.

7. SAJU, S/O.THOMMAN, AGED 35 YEARS, DO. DO.

8. ELIYAMMA, W/O.THANKACHAN, AGED 43 YEARS, PANTHAPURATH HOUSE, VENGALLOOR KARA, PURAPPUZHA VILLAGE, THODUPUZHA TALUK.

BY ADV. SRI.P.M.JOSHI

RESPONDENTS:
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1. K.MARY, KAKKUZHIYIL HOUSE,
   POOVAKKULAM KARA, VELIYANNOOR VILLAGE,
   MEENACHIL TALUK.

2. BEENA, D/O.MARY, KAKKUZHIYIL HOUSE,
   POOVAKKULAM KARA, VELIYANNOOR VILLAGE,
   MEENACHIL TALUK.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 05/01/2007, ALONG WITH CRP NO. 544 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

F.A.O.NOS.179 OF 2006 &

C.R.P.NO. 544 OF 2006

Dated this the 5th day of January,2007

JUDGMENT

The appellants in the F.A.O, who are the petitioners in the Civil Revision Petition, filed O.S.No.179 of 1999, on the file of the Court of the Munsiff of Pala, against the respondents herein for declaration and injunction. When the suit was listed for trial, the plaintiffs were not ready and an application for adjournment was filed. That application was dismissed and the trial court dismissed the suit and decreed the counter claim filed by the defendants. A mandatory injunction in favour of the defendants was granted by the trial court.

2. The plaintiffs filed I.A.No.1870 of 2003 to restore the suit and to set aside the exparte decree in the counter claim. The learned Munsiff dismissed that application. Challenging the order in I.A.No.1870 of

2003, the plaintiffs filed C.M.A.No.4 of 2004 before the Sub Court, Pala. The C.M.A. was posted for hearing on 18.8.2005. There was no representation on behalf of the plaintiffs/appellants and, therefore, the C.M.A was dismissed for default on 18.8.2005 itself. On 10.2.2006, the plaintiffs filed I.A.No.313 of 2006 for restoration of the C.M.A with a petition for condonation of the delay of 175 days. The application for condonation of delay, namely, I.A.No.314 of 2006, was dismissed and consequently, the C.M.A was also dismissed by the Appellate Court. The order in I.A.No.314 of 2006 is challenged in the Revision while the order in I.A.No.313 of 2006 is challenged in the F.A.O..

3. It is submitted that the application for restoration of the suit and for setting aside the exparte decree in the counter claim was filed within time and that the C.M.A challenging the order dismissing the same was also filed within time. The learned counsel for the appellants/ petitioners submits

that the C.M.A was dismissed since the counsel was not aware of the date of posting as there was an omission to note the date. He referred to the affidavit filed by the counsel appearing for the plaintiffs. The learned counsel for the respondents submits that the attempt of the plaintiffs is only to protract the proceedings and that there is no ground for restoring the C.M.A which was dismissed for default.

4. Considering the facts and circumstances of the case and also considering the fact that the application for restoration of the suit, and the C.M.A were filed within time, I am inclined to allow the F.A.O as well as the Civil Revision Petition on costs. It is submitted that the property belonging to the plaintiffs is having only an extent of two cents and that the dispute is regarding a well. Taking into account these facts, I am of the view that costs of Rs.1,500/- would be adequate and sufficient.

In the result, the F.A.O and the Civil Revision

Petition are allowed and the orders impugned therein are set aside on condition that the appellants in the F.A.O, who are the petitioners in the Civil Revision Petition, shall pay or deposit for payment to the respondents/defendants before the Lower Appellate Court a sum of Rs.1,500/- within a period of six weeks from today. In case of default of payment of costs, the F.A.O as well as the Civil Revision Petition shall stand dismissed. On payment of costs within the aforesaid time, C.M.A.No.4 of 2004 shall stand restored. The court below shall dispose of C.M.A.No.4 of 2004 within a period of three months from today.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

CRL.M.C.NO. OF

O R D E R

September, 2006